



## MEMORANDUM

To: Directors, Fiscal Officers, and Agency Legal Counsel Whose Directors/Heads Are Appointed by the Governor and All State Boards and Commissions

From: J. Pari Sabety, Director 

Subject: Revised Calendar Year 2007 Procedure: Contribution Restrictions Applicable To Award of Contracts for the Purchase of Goods or Services Costing More than \$500.00

Date: July 10, 2007

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This memorandum supersedes the December 26, 2006 Memo regarding Calendar Year (CY) 2007 procedures to be followed to assure compliance with the public contract restrictions under Ohio Revised Code Section 3517.13. . This memo applies to any state office, department or agency whose director or head is appointed by the Governor or a board, commission, council, task force. It also applies to other state body some or all of whose members are appointed by the Governor, including state universities.

The procedures shall be followed whenever any contract, either competitively bid or non-competitively bid, which may be awarded during CY 2007 for the purchase of goods or services costing more than \$500.00. Am. Sub. H.B. 694, 126<sup>th</sup> General Assembly (“H.B. 694”), revising O.R.C. § 3517.13 and the Governor’s Executive Order 2007 – 01S, Establishing New Ethics Requirements, necessitate a revised procedure.

### **I. New Statutory Requirements**

#### **A. Pre-contract**

Pursuant to Ohio Revised Code Section 3517.13(I) and (J), no state contract may be awarded for goods or services costing more than \$500 if political contributions to the Governor’s campaign committee from designated sources exceeded any one of three limits.

The law prohibits the award of a contract when contributions from certain individuals exceed \$1,000 for any such person, (2) when contributions from a political action committee (PAC) affiliated with a contract recipient exceed \$2,000, or (3) when contributions from any combination of the specified persons or an affiliated PAC exceed \$2,000 during the two calendar years (January–December) prior to the year in which the contract is awarded. The \$1,000 limit is not new with respect to most non-competitively bid contracts awarded by directors and heads of offices, agencies and departments appointed by the Governor. However, it is new for competitively bid contracts, un-bid contracts incidental to bid contracts, contracts by force account and all contracts for goods or services over \$500 awarded by any board, commission, council, task force or other state body one or more members of which are appointed by the Governor. In the June 8, 2007 decision by the Franklin County Court of Common Pleas, the Court held that the new provisions could not be applied retroactively to contributions made prior to the H. B. 694's April 4, 2007 effective date. Therefore, the new provisions will not apply to contracts to be awarded in 2007 since all relevant contributions would have been in 2005 and 2006. However, the former \$1,000 per person limit still applies to un-bid contracts awarded by directors and heads of offices, agencies and departments appointed by the Governor, except for contracts incidental to bid contracts and contracts by force account. Contracts requiring Controlling Board approval are not exempt and are considered to be made solely by the executive branch officeholder.

The specified persons whose contributions to the Governor's campaign committee must be taken into consideration vary depending on the type of entity seeking the contract. They are as follows:

**INDIVIDUAL OR UNINCORPORATED SOLE PROPRIETORSHIP:** The individual or sole proprietor seeking a contract, or the spouse of such person.

**PARTNERSHIP OR OTHER UNINCORPORATED BUSINESS:** Partners or owners of the general, limited, limited liability, LLP, and LPA partnership or other unincorporated business regardless of percentage of ownership, or the spouse of any such person.

**LIMITED LIABILITY COMPANY:** Owners of the limited liability company regardless of percentage of ownership, or the spouse of any such person.

**CHAPTER 1785 PROFESSIONAL PRACTICE ASSOCIATION:** Shareholders of the professional practice association regardless of percentage of ownership, or the spouse of any such person.

**CORPORATION OR BUSINESS TRUST:** Shareholder or owner of more than 20% of the corporation, including sub-chapter S corporations, or business trust, or the spouse of any such person.

**ATTRIBUTION OF BUSINESS CONTRIBUTION TO OWNER:** Ohio law requires that when a contribution is made by an unincorporated business entity, the contribution must be attributed by the business to one or more of the business owners. The amount may be

attributed in full to one owner or divided among some or all of the owners. The amount attributed to an owner is considered to be a contribution from the person for purposes of the prohibition of the award of contracts, even if the business entity that made the contribution is not the same that is seeking the contract.

**B. Post-contract**

The new law now also limits contributions to the officeholder after the award of a contract. Beginning the date a contract is awarded through one year after the expiration of the contract, contributions from the specified persons may not exceed \$1,000 per person, contributions from an affiliated PAC may not exceed \$2,000 and combined contributions from all of the specified persons and any affiliated PAC may not exceed \$2,000 combined. These limits are unaffected by the Franklin County Court decision. Therefore, they apply to all contracts for goods or services over \$500 awarded on or after April 4, 2007, as well as those contracts which were awarded prior to but were not completed as of April 4, 2007. In the latter case, the contribution period begins April 4, 2007, rather than when the contract was originally awarded. The limit applies to both bid and un-bid contracts and contracts awarded by boards, commissions, councils, task forces and other bodies one or more members of which are appointed by the Governor.

**C. Certification**

H. B. 694 requires that every contract for goods or services of more than \$500 must contain a certification signed by the contract recipient certifying that the recipient is in compliance with R. C. 3517.13. This requirement applies to all such contracts entered into on or after April 4, 2007. The Attorney General has prescribed the following recommended language be inserted into all contracts:

ARTICLE \_\_\_\_\_: CAMPAIGN CONTRIBUTIONS

“Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O. R. C. Section 3517.13.”

**II. New Executive Order Requirements**

Pursuant to Executive Order 2007-01S, when any Director appointed by the Governor or State Board or Commission awards any contract without a competitive bid for the products or services provided by the contract, the director, board, or commission is required to state, in writing, the reason the contract was awarded without bids and must make this written statement available to the public.

**III. Procedures**

For each contract for the purchase of goods or services costing more than \$500.00 that is awarded during CY 2007, the following procedures shall be used:

1. State agencies, boards, commissions, committees, councils, and similar entities whose director or head is appointed by the Governor shall send one memorandum to all vendors who received purchase orders in excess of \$500 and any new vendor when a new vendor is added to the vendor system to ensure knowledge and compliance of O.R.C. section 3517.13 and Executive Order 2007-01S.
2. All requests for proposals, proposals submitted by a vendor, written contracts, Controlling Board requests, and purchase orders for contracts of goods or services costing more than \$500 shall include a standard statement affirming the vendor's compliance with the revised contribution restrictions.
3. The vendor is responsible for ascertaining whether the vendor can make the affirmative statements requested in those documents. A vendor who cannot make such statements shall not accept the award of the contract. A vendor who ***makes a prohibited contribution to*** a director or head of a state agency, board, commission, committee, council, or similar entity after the contract is awarded may be precluded from obtaining future contracts.
4. OBM will require that an individual vendor who has made contributions in excess of \$1,000.00 within two prior calendar years (beginning April, 2007 forward), or LLCs, LLPs, partnerships, or corporations that are owned by individuals who own 20% or more of the shares that have aggregately contributed more than \$2,000 to the holder of the public office within the two calendar years (beginning April, 2007 forward) to complete a separate contribution disclosure statement. Agencies may access master table inquiry VIBD (Vendor Bid Identification) to determine which vendors have indicated they are unable to accept a noncompetitively bid contract for the purchase of goods or services costing more than \$500.00 because their contributions exceed the limits set forth in this memorandum.
5. The agency shall send a completed purchase order to a vendor immediately to document both the contract with the vendor and the encumbrance of funds sufficient for the contract.
6. The vendor's acceptance of the purchase order, with the contribution restriction statement printed on the form, signifies the vendor's compliance with the revised contribution restrictions of Section 3517.13 of the Revised Code.
7. If the vendor has questions about the inclusion of the compliance statement in a request for proposals, proposal, contract, or Controlling Board request or on the purchase order, the state agency should refer the vendor to OBM's memorandum to State of Ohio vendors explaining the revised CY 2007 procedure.
8. If the vendor either (1) cannot make an affirmative statement required in a proposal, contract, or Controlling Board request or on the purchase order, or (2) does not know if the statement can be made, the agency CANNOT make the purchase from the vendor and the vendor CANNOT accept the contract award.
9. Vendors are required to include a certification by the either the individual or organization awarded the contract that the persons responsible for the organization are in compliance with these contractor contribution limitations. Any contract that contains a falsified certification shall be rescinded, along with possible criminal penalties for knowingly falsifying that certification.

10. For contracts entered into between April 7, 2007 and the present, each agency must obtain a certification from the vendor declaring compliance. The certification can be in the form of an addendum to the contract. It must contain language similar to the language of Section D of this memo and signed by the person(s) responsible for the entity.

#### Closing

This memorandum notifies you of the CY 2007 procedure that a state agency whose director or head is appointed by the Governor will follow to assure compliance with the contribution restrictions applicable to the award of a contract for the purchase of goods and services costing more than \$ 500.00.

In the interest of expediting state business, please communicate to your purchasing and contract staff the information contained in this memorandum.

Any questions about this procedure should be directed to Paula Hicks-Hudson, OBM, Chief Legal Counsel at (614) 466-4034 (telephone) or (614) 466-3813 (fax).